

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| ROCKY STARCHER,          | ) | CASE NO.: 1:05CV1314             |
|                          | ) |                                  |
| Petitioner,              | ) | JUDGE JOHN ADAMS                 |
|                          | ) |                                  |
| v.                       | ) |                                  |
|                          | ) |                                  |
| MICHELE EBERLIN, Warden, | ) | <b><u>ORDER AND DECISION</u></b> |
|                          | ) |                                  |
| Respondent.              | ) |                                  |
|                          | ) |                                  |

This matter comes before the Court on Objections and Exceptions to the Magistrate Judge's Report and Recommendation by the Petitioner, Rocky Starcher ("Petitioner"). This action was referred to Magistrate Judge Vecchiarelli for a Report and Recommendation ("Report") on the Petition for Habeas Corpus. The Magistrate found all seven (7) of Petitioner's grounds for relief not well taken and recommended that this Court dismiss the action. Petitioner timely filed objections to the Report. The Federal Magistrates Act requires a district court to conduct a *de novo* review of those portions of the Report to which an objection has been made. 28 U.S.C. §636(b)(1). The Court has been advised, having reviewed the Petition, Respondent's Return of Writ and exhibits attached thereto, Petitioner's Traverse and Brief, the Report, Petitioner's Objections thereto, exhibits and applicable law.

Having considered *de novo* those portions of the Magistrate's Report to which objection is made by the Petitioner, it is determined that the Court finds Petitioner did procedurally default on Counts One through Three in his petition for the reasons stated in the Report. The Court also finds, contrary to Petitioner's argument, that at no time does Petitioner make the allegation that

he is actually innocent of the charges and has therefore made no “colorable showing of actual innocence so as to demonstrate a fundamental miscarriage of justice which would permit review of his defaulted claims.” Doc. #19, p. 2. Upon review, there appears to be no factual disputes which would warrant a hearing. It is further determined, based on a *de novo* review of the record in light of Petitioner’s objections, this Court agrees with the conclusions of the Magistrate Judge and adopts the Report as its own. Therefore, the Report by the Magistrate Judge is ADOPTED IN WHOLE and the findings of fact and conclusions of law are fully incorporated by reference herein. As such, the Petition for Habeas Corpus is hereby DISMISSED with prejudice. No further articulation of the Court’s reasoning need be provided. *Tuggle v. Seabold*, 806 F.2d 87, 92-93 (6<sup>th</sup> Cir. 1986).

So ordered.

May 30, 2006

s/ John R. Adams  
JUDGE JOHN R. ADAMS  
UNITED STATES DISTRICT JUDGE